

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY J. RYAN, et al.,)	
)	
Plaintiffs,)	Case No. 1:03-cv-439
)	
v.)	Honorable David W. McKeague
)	
ADELE McGINN-LOOMIS, et al.,)	
)	
Defendants.)	<u>ORDER</u>
)	

This matter came on for hearing on plaintiffs' motion to compel the depositions of Circuit Court Judges Patricia Gardner and Patrick Hillary and the depositions of judicial employees Barbara Ingram and Beverly Fountain, as amended. (docket # 60). The subpoenaed parties, through their counsel Thomas F. Koernke, have intervened to oppose the motion. The court conducted a hearing on the motion on January 30, 2004. At the hearing, the court made oral findings, concluding that the subpoenaed judges were entitled to invoke the deliberative process privilege to shield from disclosure the mental processes used in formulating official judgments or the reasons that motivated them in the performance of their judicial duties. The court further concluded that the respondent judges and their staff were entitled to invoke the qualified judicial privilege, which protects advice and other statements made in confidence to a judge by members of his or her staff. The court further concluded that plaintiffs had borne the burden of demonstrating extraordinary circumstances to justify questioning the subpoenaed parties concerning certain purely factual matters directly relevant to the present case. To avoid any ethical problems arising under the Canon of Judicial Ethics, the

depositions should be postponed until the state case, *Ryan v. Ryan*, case no. 01-09528-DZ, has been finally dismissed. Accordingly, for the reasons set forth more fully on the record:

IT IS ORDERED that plaintiffs' motion to compel (docket # 60), as amended, be and hereby is GRANTED IN PART AND DENIED IN PART as follows:

A. Plaintiffs shall be allowed to depose Judge Patricia Gardner on the following areas:

(1) the relationship, if any, between Judge Gardner and her staff and Adele McGinn-Loomis;

(2) the relationship, if any, between Judge Gardner and her staff and Mary Benedict;

(3) the facts and circumstances surrounding all communications, oral or written, between Judge Gardner and her staff and Adele McGinn-Loomis or Mary Benedict with regard to the subject matter of Kent County Circuit Court case no. 01-09528-DZ, occurring before the formal docketing of said case on September 20, 2001. Counsel may inquire concerning all statements made to or by the judge during such *ex parte* contacts but may not inquire concerning the judge's reasons for any action taken or not taken.

B. Plaintiffs shall be allowed to depose Judge Patrick Hillary, limited to the following areas:

(1) the facts and circumstances surrounding all communications, oral or written, between Judge Hillary and Adele

McGinn-Loomis or Mary Benedict on September 19, 2001, with regard to the subject matter of Kent County Circuit Court case no. 01-09528-DZ. Counsel may inquire into all statements made to or by Judge Hillary during such communications, but may not inquire into his reasons for any action taken or not taken.

C. Plaintiffs may depose Ms. Ingram and Ms. Fountain concerning their involvement, if any, in the events alleged in the complaint, but may not inquire into their advice to Judge Gardner.

IT IS FURTHER ORDERED that said judges and judicial staff shall not be required to submit to deposition until *Ryan v. Ryan*, case no. 01-09528-DZ, has been remanded from the Michigan Court of Appeals and dismissed by the Circuit Court.

IT IS FURTHER ORDERED that Judge McKeague's scheduling order for supplemental briefing dated November 25, 2003, is modified as follows:

1. Discovery within the scope of Judge McKeague's order shall conclude on **March 15, 2004**.
2. The parties shall file supplemental briefs in support of and in opposition to the pending motions to dismiss not later than **April 16, 2004**, and briefs in response thereto not later than **April 26, 2004**.
3. The continued hearing on the supplemented motions to dismiss is adjourned, to a date to be established by Judge McKeague's office.

The foregoing schedule is premised on the assumption that the *Ryan v. Ryan* case is dismissed during the month of February 2004. If it is not dismissed during that month, counsel shall contact the court to schedule a telephone conference for the purpose of resetting dates.

DONE AND ORDERED this 30th day of January, 2004.

/s/ Joseph G. Scoville
United States Magistrate Judge